

Remarks:

In the December 29, 2008, Office Action, the abstract of the disclosure was objected to due to the use therein of the word "means." On the merits, Claims 1-20 were rejected under 35 U.S.C. Section 102(b) as being anticipated by William et al. (U.S. Patent No. 5,322,034).

Amendments to the Claims

Independent Claims 1, 8, and 15 have been amended to more precisely claim the present invention. In particular, independent Claim 1 has been amended to incorporate the limitations of dependent Claim 2, which has been cancelled without prejudice; independent Claim 8 has been amended to incorporate the limitations of dependent Claim 9, which has been cancelled without prejudice; and independent Claim 15 has been amended to incorporate the limitations of dependent Claim 16, which has been cancelled without prejudice. Basis for the amendments to independent Claims 1, 8, and 15 is found in originally-filed dependent Claims 2, 9, and 16, respectively. Additional basis for the amendments to Claims 1, 8, and 15 is found in paragraphs 0048-0050 of the specification. No new matter has been added.

The Present Invention

Applicants' invention is an electronic data collecting device for recording contacts an individual animal makes with other individual animals or for recording the contacts between different food products. Each of a plurality of animals in a first instance, or each

of a plurality of food products in a second instance, has an electronic data collecting device associated therewith. Each electronic data collecting device contains a receiver, is normally in a receive condition, and when it receives an identifier from another electronic data collecting device stores that identifier received from another electronic data collecting device in memory. Each electronic data collecting device also contains a transmitter, which it periodically places into a transmit condition to transmit an identifier identifying the electronic data collecting device. Multiple ones of the electronic data collecting devices as used in the present invention may each be identical.

The Willham et al. Reference

The Willham et al. reference in contrast has an electronic identification and data storage module and a reading and recording device which are completely separate and are not interchangeable. The electronic identification and data storage module is stated to be carried with an animal, and stores data relating to the animal over the lifetime of the animal. The reading and recording device can transmit data to or receive data from the electronic identification and data storage module. The electronic identification and data storage module can receive data regarding the animal from the reading and recording device and store that data. The electronic identification and data storage module can also transmit stored data regarding the animal to the reading and recording device. The electronic identification and data storage module includes means for minimizing power consumption that only allows operation when the electronic identification and data

storage module is accessed by the reading and recording device. Notably, the electronic identification and data storage module does not have the capability to periodically cause the electronic identification and data storage module to transmit identifying information associated with the electronic identification and data storage module, or even to periodically wake up from its low power state.

Discussion of the Rejection of Claims

Prior to responding to the specific points made by the Examiner in the December 29, 2008, Office Action, Applicants note that the issue of patentability of the claims is based upon whether or not the disclosure of the Willham et al. reference anticipates the subject matter of the claims within the meaning of 35 U.S.C. Section 102(b) (or renders the claims obvious within the meaning of 35 U.S.C. Section 103(a)). The analysis which must be used in making this determination is set forth in *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (citations omitted) where the court explained:

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant.

"After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.

"If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent..."

When one reviews the totality of the record, including the entire position of the Examiner as articulated in the December 29, 2008, Office Action, and takes into account the persuasiveness of argument, it is believed that the only reasonable conclusion to be reached is that the Examiner has not properly discharged her initial burden of establishing a *prima facie* case of obviousness.

Even prior to the amendments made in this Amendment B, there were at least two reasons that the Willham et al. reference failed to anticipate independent Claims 1, 8, and 15. First, nothing in the Willham et al. reference teaches or suggests the use of a second identifier in the reading and recording device, which may be received by the electronic identification and data storage module. Other data regarding the subject animal is loaded by the reading and recording device to the electronic identification and data storage module in the Willham et al. reference, but there is not a single word or even an inference that there is any identifier identifying the reading and recording device itself (despite the fact that December 29, 2008, Office Action so alleged at page 3, lines 11-13, notably without any reference to specific language contained in the Willham et al. reference). For this reason alone, the Section 102(b) rejection failed to present a *prima facie* case of anticipation (or obviousness).

Second, the Examiner stated that the processor of the Willham et al. reference "will, upon the occurrence of a wakeup signal (20), cause the radio transmitter to transmit radio signals from said device representing said unique first identifier from said device..."

December 29, 2008, Office Action, page 3, lines 11-13. However, in this regard the Willham et al. reference is believed to lack enablement, since it is not stated therein what has to occur in order for the power to be restored. Since the Willham et al. reference lacks any detail about how the power source antenna 24 "removes and restores power to module 10," it is apparent that the Willham et al. reference fails to provide an enabling disclosure sufficient to reject Applicants' system as claimed in which: 1. the default operating condition of the device is for the radio receiver to be in a receive condition; and 2. upon receipt of a periodic wakeup call, the processor is arranged to place the radio transmitter into a transmit condition. For this reason as well, the Section 102(b) rejection failed to present a *prima facie* case of anticipation (or obviousness).

However, in an attempt to expedite the prosecution of the present patent application, Applicants have amended independent Claims 1, 8, and 15 to even further differentiate them over the Willham et al. reference. Each of these independent claims have been amended to add the further limitation that the processor is arranged to periodically place said radio transmitter into a transmit condition to transmit the first identifier. This limitation is not taught or suggested in any way by the Willham et al. reference. In fact, the Willham et al. reference would never have the occasion to have the electronic identification and data storage module periodically send transmit a first identifier since the electronic identification and data storage module is always in a minimum power mode until and unless it receives a signal from the reading and recording

device. Thus, the Willham et al. reference not only does not disclose this limitation, but it instead teaches directly away from doing so. As such, Applicants submit that independent claims 1, 8, and 15 are clearly patentable over the Willham et al reference for this additional reason.

Consequently, dependant Claims 3-7 which depend from independent Claim 1, dependant Claims 10-14 which depend from independent Claim 8, and dependant Claim 17-20 which depend from independent Claim 15, are then by definition also patentable.

Applicants believe that the application with Claims 1, 3-8, 10-15, and 17-20 as amended are patentable at this time. Accordingly, these claims remain pending following entry of this Amendment B, and the case with Claims 1, 3-8, 10-15, and 17-20 is believed to be in condition for allowance at this time. Applicants respectfully request entry of this Amendment B, and an early and favorable consideration of the claimed subject matter as amended is solicited. Should the Examiner believe that the prosecution of the application

can be so expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

BY /Leslie S. Miller/
Leslie S. Miller
Attorney for Applicants
Registration No. 30,662

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202
(414) 298-8321

Customer No. 22922